

25481
SEC

SERVICE DATE - APRIL 22, 1997

SURFACE TRANSPORTATION BOARD¹

CORRECTED DECISION²

No. 41665

MAKITA U.S.A., INC.--PETITION FOR DECLARATORY ORDER--
CERTAIN RATES AND PRACTICES OF AMERICAN FREIGHT SYSTEM, INC.

Decided: April 18, 1997

This proceeding arises out of the efforts of American Freight System, Inc. (respondent) to collect undercharges on certain shipments from shipper, Makita U.S.A., Inc. (petitioner). The matter is before the Board on referral from the United States Bankruptcy Court for the District of Kansas, in *American Freight System, Inc. v. Makita U.S.A., Inc.*, Case No. 88-41050-11, Adv. No. 90-8229.

By decision December 6, 1995, the ICC established a procedural schedule in this proceeding. Petitioner filed its opening statement on September 16, 1996. Respondent's reply statement was due on October 16, 1996. However, Board records indicate that respondent has not filed its reply statement.

Therefore, respondent will be directed, within 20 days of service of this decision, either to file its reply statement or to show cause why this proceeding should not be disposed of on its existing record. If respondent timely files its reply statement, petitioner will have 20 days from the date of respondent's filing to file its rebuttal statement.

It is ordered:

¹ On December 29, 1995, the President signed the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICC Termination Act or the Act). Effective January 1, 1996, the Act abolished the Interstate Commerce Commission (ICC) and transferred various ICC functions to a newly created Surface Transportation Board (Board), including the resolution of issues in motor carrier undercharge proceedings, 49 U.S.C. 13709-13711.

² This decision corrects and modifies the prior decision served April 16, 1997, to correct inadvertent omissions and clarify that this show cause decision is directed at respondent rather than petitioner.

No. 41665

1. Respondent shall, within 20 days of service of this decision, file its reply statement or show cause why this proceeding should not be disposed of on its existing record.

2. If respondent timely files its reply statement, petitioner's rebuttal statement will be due 20 days from the date respondent files its reply.

3. This decision is effective on the service date.

4. A copy of this decision will be mailed to:

The Honorable James A. Pusateri
United States Bankruptcy Court
for the District of Kansas
Frank Carlson Federal Building and
U.S. Courthouse
444 S.E. Quincy Street, Room 215
Topeka, KS 66683

Re: Case No. 88-41050-11, Adv. No. 90-7655

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary